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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 385

PUERTO RICO TELEPHONE COMPANY,
Petitioner,

vs.

ROSA M. FIGUEROA DE ARROYO, IRIS TORRES DE HERNANDEZ, ANDREA COLON TUBENS, IRIS TRABAL QUINTANA, JOSE A. FRANQUI, LUZ ARMINDA TORO TIRADO, BENJAMIN TORRES RIVERA, CARMEN E. DE LA ROSA DE ORTIZ, ELSIE TORRES RAMOS, ALFREDO MORÉU IRIZARRY, ELSIE LUGO BERNIER,

AND

SINDICATO DE TRABAJADORES, PACKINGHOUSE, AFL-CIO, DISTRITO DE PUERTO RICO AND UNION DE EMPLEADOS DE LA INDUSTRIA DEL TELEFONO DE PUERTO RICO, LOCAL 963,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION FOR REHEARING.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION FOR REHEARING.

Petitioner prays that this Court grant a rehearing of its order of October 26, 1970, denying the petition for a writ of certiorari and that a writ of certiorari issue to

review the judgment of the Court of Appeals for the First Circuit in the above-entitled case as prayed for in the petition filed July 13, 1970.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

Admittedly, it could be suggested that it may be too soon after *Vaca* v. *Sipes*, 386 U. S. 171 (1967), to grapple with the difficult questions raised by that case. But a denial of certiorari here can only undermine the holding there by creating both litigation—under contractual grievance procedures and in courts under § 301, as well—and uncertainty as to the legal liability of both Employers and Unions flowing from a Union's good faith refusal to process a grievance to arbitration, issues, in large measure, supposedly laid to rest by *Vaca* and subsequent cases in other Circuits, but which, in light of the case at bar, were surely not. In summary, these issues are:

(1) Whether a Union breaches its duty of fair representation by failing to process grievances but instead pursues other remedies in complete good faith? At least three Circuits have indicated that only where hostility has been shown can a Union be held to have breached this duty; two clearly holding the standard of negligence applied by the First Circuit to be inappropriate. *See, e.g., Bazarte* v. *United Transportation Union*, 163 Daily Lab. Rep. A-3 (3rd Cir. 1970); *St. Clair* v. *Local Union No. 515, IBT*, 422 F. 2d 128 (6th Cir. 1969); *Hardcastle* v. *Western Greyhound Lines*, 303 F. 2d 186 (9th Cir.), *cert. denied*, 371 U. S. 920 (1962).[1] It is not difficult to see that the First Circuit's decision hampers Unions in screening and settling grievances with the concomitant flooding of the arbitration procedure and an influx of § 301 suits to contest the

1. Supreme Court Rule 19(1)(b) [conflict among the Circuits].

wisdom, rather than the motivation, of a particular decision not to take a case to arbitration.

(2) Whether an Employer which has concededly done nothing to frustrate the grievance procedure should be deprived of its contractual remedy, arbitration, because the other party to the contract made a good faith choice to eschew the grievance procedure and pursue other remedies instead? Even a moment's reflection indicates the serious tension between this case and this Court's decision in *Drake Bakeries, Inc.* v. *Local 50, American Bakery & Confectionery Workers Int'l.*, 370 U. S. 254 (1962).[2]

(3) Finally, the undermining of the grievance-arbitration procedure is complete with Unions and Employers having different statutes of limitations applicable, the limitation period of the Employer invariably longer, as here. Assuming the standard of negligence, it is not hard to imagine Unions promoting § 301 suits by "negligently" refusing to process close contractual cases, such as the ones presented here, the grievants then filing suit after the Union's limitations period has run. It is not enough for the First Circuit to "discount the likelihood while acknowledging the possibility, leaving it to Congress to enact some statute of limitations applicable to both employer and union," 425 F. 2d 281, 286, n. 6, when this Court has mandated courts to fashion law under § 301. *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448 (1957). In applying different limitation periods and in suggesting that the matter was worthy of Congressional consideration, the First Circuit, at best, ignored this Court's mandate and, at worst, created a disruptive framework for the application of a workable national labor policy.[3]

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2. Supreme Court Rule 19(1)(b) [conflict with Supreme Court decision].

3. Supreme Court Rule 19(1)(b) [conflict with Supreme Court decision; important question of federal law].

CONCLUSION.

Certainly this Court has indicated on numerous occasions the primal role of the grievance-arbitration procedure in national labor policy. But the net effect of the First Circuit's decision here will surely be to hamper that procedure in that it penalizes Employers who are willing to abide by it and provides an incentive for unions not to process and resolve grievances promptly. And while it is no doubt fashionable for lawyers to conjure up visions of disaster resulting from every losing cause, we earnestly believe that if this decision is left intact it will return to haunt both this Court and the national labor policy which this case so clearly contravenes.

For the reasons set forth above and in the petition for writ of certiorari it is respectfully urged that rehearing be granted and that, upon such rehearing a writ of certiorari issue to the Court of Appeals for the First Circuit.

Respectfully submitted,

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Certificate of Counsel.

I hereby certify that the foregoing petition is presented in good faith and not for delay and is restricted to grounds certified in Rule 58 of the rules of this Court.

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Joel H. Kaplan,
Attorney for Petitioner.